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Attorneys for Plaintiff JENS ERIK SORENSEN,  
 as Trustee of SORENSEN RESEARCH AND  
 DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of  
 SORENSEN RESEARCH AND  
 DEVELOPMENT TRUST,

Plaintiff,

v.

GIANT INTERNATIONAL (USA) LTD., a  
 Delaware corporation, and DOES 1-10,

Defendants.

) Case No. 07-CV-02121-BTM-CAB

)  
 ) **DECLARATION OF J. MICHAEL KALER,**  
 ) **ESQ. IN SUPPORT OF**  
 ) **OPPOSITION TO DEFENDANT'S**  
 ) **MOTION TO STAY PENDING OUTCOME**  
 ) **OF REEXAMINATION PROCEEDINGS**

)  
 ) Date: February 8, 2008  
 ) Time: 11:00 a.m.  
 ) Courtroom 15 – 5<sup>th</sup> Floor  
 ) The Hon. Barry T. Moskowitz

GIANT INTERNATIONAL (USA) LTD., a  
 Delaware corporation,

Cross-Complainant,

v.

) *NO ORAL ARGUMENT*  
 ) *UNLESS REQUESTED BY THE COURT*  
 )  
 ) **PLAINTIFF HAS FILED A REQUEST FOR**  
 ) **ORAL ARGUMENTS**

JENS ERIK SORENSEN, as Trustee of  
 SORENSEN RESEARCH AND  
 DEVELOPMENT TRUST,

Cross-Defendant.

1 I, J. MICHAEL KALER, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I  
3 have personal knowledge of the facts contained within the following paragraphs, and  
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Defendant  
6 Sorensen Research and Development Trust ("SRDT"), Plaintiff in the above-  
7 captioned matter. This Declaration is being submitted in conjunction with Plaintiff's  
8 Opposition to Defendant Giant International's Motion for Stay.

9 3. Giant's attorneys have informally advised SRDT's counsel that all of  
10 Giant's manufacturing people and manufacturing information is located in China. A  
11 true and correct copy of a letter reflecting this is attached hereto as Exhibit A. Thus,  
12 to SRDT's knowledge, all of the manufacturing process information is likely held by  
13 companies over which this Court has no jurisdiction.

14 4. Giant is owned by a myriad of foreign companies. According to Docket  
15 #8 Statement of Financial Interest, Giant has disclosed that it is 100% owned by a  
16 British Virgin Island entity, which is in turn 100% owned by a Bermuda entity with a  
17 principal place of business in Hong Kong and publicly traded on the Singapore  
18 Exchange. This Bermuda company is partly owned by two British Virgin Islands  
19 entities, which are in turn 100% owned by a Hong Kong entity. It is unknown which  
20 company or companies have access and/or control to the relevant manufacturing and  
21 process information.

22 5. As the Court is aware, another patent infringement case involving the  
23 '184 patent, Sorensen v. Black & Decker Corporation, et al, Case No. 06cv1572, has  
24 been stayed pending a third-party patent reexamination requested filed in July 2007  
25 by Black & Decker ("1<sup>st</sup> reexamination"). The 1<sup>st</sup> reexamination is already in its  
26 seventh month and the first office action has not yet issued.

27 6. Plaintiff declined to file an optional patent owner's statement in  
28 response to the reexamination request. One result of this election is that the party

1 requesting reexamination is not provided a second opportunity to file additional  
2 arguments with the USPTO. The election not to file a patent owner's statement has  
3 the potential to shorten the reexamination significantly.

4 7. Shortly thereafter, and a full six months after the 1<sup>st</sup> reexamination  
5 request had been filed, co-defendants Phillips Plastics and Hi-Tech Plastics filed  
6 their own third-party reexamination request ("2<sup>nd</sup> reexamination") with the USPTO,  
7 citing some of same prior art listed in the 1<sup>st</sup> reexamination request.

8 8. Although the USPTO has not issued any response to the 2<sup>nd</sup>  
9 reexamination request, it is reasonably foreseeable that this 2<sup>nd</sup> reexamination request  
10 will lengthen the time from the 1<sup>st</sup> reexamination filing to completion of the  
11 reexamination process.

12 9. Plaintiff made reasonable efforts pre-litigation to obtain process  
13 information from Giant as to the accused products. SRDT's counsel wrote letters  
14 asking for process information and notifying Giant of the intent to use the 35 U.S.C.  
15 § 295 presumption of infringement if insufficient information were provided.

16 SWORN TO under penalty of perjury of the laws of the State of California  
17 and the United States, this 25<sup>th</sup> day of January, 2008.

18  
19 /s/ J. Michael Kaler

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21 J. Michael Kaler, Esq.  
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**PROOF OF SERVICE**

I, J. Michael Kaler declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kaler Law Offices, 9930 Mesa Rim Road, Suite 200, San Diego, California, 92121. I am a member of the State Bar of California and the Bar of this Court.

On January 25, 2008, I served on the parties to this action the following documents:

**DECLARATION OF J. MICHAEL KALER, ESQ. IN SUPPORT OF  
OPPOSITION TO DEFENDANT'S MOTION TO STAY PENDING OUTCOME OF  
REEXAMINATION PROCEEDINGS**

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
Allison Goddard J. Christopher Jaczko Jaczko Goddard LLP 4401 Eastgate Mall San Diego, CA 92121 agoddard@jaczkogoddard.com cjaczko@jaczkogoddard.com 858-225-3500 FAX	Defendant Giant International (USA) Ltd.	Email – Pleadings Filed with the Court
Dale Lischer Elizabeth G. Borland Kerri A. Hochgesang Smith, Gambrell & Russell, LLP Promenade II, Suite 3100 1230 Peachtree St., N.E. Atlanta, GA 30309 404-685-6945 FAX	Defendant Giant International (USA) Ltd.	Email – Pleadings Filed with the Court

- ☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- ☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- ☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.

☐ (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.

☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

I declare that the foregoing is true and correct, and that this declaration was executed on Friday, January 25, 2008, in San Diego, California.

/s/ J. Michael Kaler

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J. Michael Kaler